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IN THE

Supreme Court of the United States

October Term, 1982

CRAIG POLLARD and HENRY MEADOWS,
Petitioners,
v
THE CITY OF DETROIT; THE DETROIT POLICE DEPARTMENT; WILLIAM L. HART a/k/a CHIEF OF POLICE; GEORGE BENNETT a/k/a DEPUTY CHIEF OF POLICE and PHILLIP TANNIAN a/k/a FORMER CHIEF OF POLICE,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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QUESTIONS PRESENTED

I

WHETHER THE RESPONDENT CITY, CONSISTENT WITH PROCEDURAL DUE PROCESS OF LAW UNDER THE 14TH AMENDMENT, CAN SUMMARILY DISCHARGE PETITIONERS, EFFECTIVE RETROACTIVE TO SEVENTEEN MONTHS PRIOR TO THE TIME PETITIONERS FIRST RECEIVED NOTICE OF THE CHARGES FORMING THE BASIS OF THE SUMMARY DISMISSAL ACTION.

II

WHETHER THE RESPONDENT CITY CAN SUMMARILY DISCHARGE PETITIONERS, CONSISTENT WITH PROCEDURAL DUE PROCESS OF LAW, BASED ON CHARGES STEMMING FROM ALLEGED INCIDENTS OCCURRING MORE THAN *TWO* (2) YEARS PRIOR TO NOTIFYING THEM OF THE NATURE AND SUBSTANCE OF THOSE CHARGES AND THE PROPOSED DEPARTMENTAL ACTION.

III

WHETHER THE NOTICE OF SUSPENSION, AND THE REASON THEREFORE, RECEIVED BY PETITIONERS ON MAY 24, 1973, WAS REASONABLY CALCULATED TO GIVE THEM SUFFICIENT AND TIMELY NOTICE OF THE NEW DEPARTMENTAL CHARGES FILED AGAINST THEM SEVENTEEN MONTHS LATER ON OCTOBER 18, 1974, THEREBY COMPORTING WITH THE REQUIREMENTS OF DUE PROCESS OF LAW.

IV

WHETHER THE TRIAL COURT AND APPELLATE COURT ERRED IN FAILING TO CONSIDER PETITIONERS' ALLEGED CLAIM OF A DENIAL OF PROCEDURAL DUE PROCESS WHERE THE RESPONDENT CITY FAILED TO FOLLOW ITS OWN DULY PROMULGATED RULES, REGULATIONS AND LAWS TO EFFECT THEIR TERMINATION OF EMPLOYMENT.

V

WHETHER PETITIONERS ARE DEEMED TO HAVE WAIVED ALL CLAIMS OF PROCEDURAL AND SUBSTANTIVE DUE PROCESS VIOLATIONS UNDER THE CONSTITUTION AGAINST THE RESPONDENT CITY WHERE THEIR UNION REPRESENTATIVES REFUSED TO BRING THEIR CASES BACK BEFORE A PANEL OF ARBITRATORS FOR RE-CONSIDERATION OF THEIR DISCHARGE UNDER THE TERMS OF A COLLECTIVE BARGAINING AGREEMENT.

VI

WHETHER THE FIRST EVIDENTIARY HEARING GRANTED PETITIONERS COMMENCING *TWO YEARS* AFTER THEIR SUSPENSION FROM EMPLOYMENT, BASED ON NEW CHARGES, WAS A TIMELY AND MEANINGFUL HEARING COMPORTING WITH THE REQUIREMENTS OF DUE PROCESS OF LAW.

VII

WHETHER, AS ALLEGED IN PETITIONERS' COMPLAINT, PETITIONERS' CIVIL RIGHTS PURSUANT TO 42 USC 1983 WERE VIOLATED BY THE RESPONDENT CHIEF OF POLICE WHEN HE SUMMARILY DISCHARGED THEM ON OCTOBER 28, 1974, RETROACTIVE TO MAY 24, 1973, SEVENTEEN (17) MONTHS PRIOR THERETO, WHEN HE HAD NO AUTHORITY AND WHEN THE CITY CHARTER SPECIFICALLY PROHIBITED SUMMARY DISMISSALS IN SUCH CASES.

VII.

WHETHER PETITIONERS HAVE ALLEGED SUFFICIENT FACTS TO SUPPORT THEIR CLAIM THAT THEIR "LIBERTY INTEREST" WERE VIOLATED BY THE RESPONDENTS THROUGH THE POLICE DEPARTMENT'S WRONGFUL DISSEMINATION OF FALSE INFORMATION REGARDING PETITIONERS' TERMINATION FROM EMPLOYMENT, I.E. THAT PETITIONERS WERE DISCHARGED FOR CRIMINAL WRONGDOING WHEN IN FACT THEY HAD BEEN EXONERATED IN A COURT OF LAW OF ANY AND ALL CRIMINAL WRONGDOING PRIOR TO AN EVIDENTIARY HEARING THEREBY ADVERSELY AFFECTING PETITIONERS' OTHER EMPLOYMENT OPPORTUNITIES.

IX

WHETHER SAID DISSEMINATION OF FALSE AND DEROGATORY INFORMATION PRIOR TO AN EVIDENTIARY HEARING, VIS A VIS THE TRIAL BOARD HEARING, DENIED PETITIONERS THEIR "LIBERTY INTEREST," THEIR RIGHT TO THEIR GOOD NAME AND REPUTATION, AND TO SEEK OTHER EMPLOYMENT OPPORTUNITIES WITHOUT DUE PROCESS OF LAW.

X

WHETHER RESPONDENT CITY OF DETROIT IS LIABLE UNDER 42 USC § 1983 FOR THE ALLEGED ACTIONS OF ITS POLICE DEPARTMENT AND THE INDIVIDUALLY NAMED RESPONDENTS WHERE SAID INDIVIDUALS WERE ACTING PURSUANT TO POLICIES AND CUSTOMS ADOPTED OR ACQUIESCED TO BY SAID RESPONDENT CITY.

XI

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XV

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XVI

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XVII

WHETHER THE TRIAL AND APPELLATE COURTS, IN CONSIDERING PETITIONERS' COMPLAINT CONSTRUED THE PETITIONERS' PLEADINGS IN THE LIGHT MOST FAVORABLE TO PETITIONERS IN DETERMINING WHETHER THE JUDGMENT OF DISMISSAL UNDER FRCP 12(b)6 WAS APPROPRIATELY GRANTED TO DEFENDANTS.

XVIII

WHETHER THE RESPONDENT CITY WAS REQUIRED, UNDER THE DUE PROCESS CLAUSE OF THE UNITED STATES CONSTITUTION, TO REINSTATE PETITIONERS TO THEIR FORMER POSITION AFTER THE INITIAL BASIS OF THE SUSPENSION NO LONGER EXISTED.

XIX

WHETHER PETITIONERS WERE REQUIRED TO EXHAUST THEIR ADMINISTRATIVE/CONTRACTUAL REMEDIES PRIOR TO COMMENCING LITIGATION ALLEGING A VIOLATION OF THEIR UNITED STATES CONSTITUTIONAL AND CIVIL RIGHTS.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

The petitioners, Craig Pollard and Henry Meadows, respectfully pray that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit entered in this proceeding on February 17, 1982 and its order denying petitioners' Petition for Rehearing En Banc entered on April 27, 1982.

OPINION BELOW

The Opinion/Order of the Court of Appeals appears in the Appendix hereto. The Opinion of the District Court for the Eastern District of Michigan was rendered orally from the bench on February 26, 1980 by the Honorable Charles W. Joiner and a transcript of that Opinion appears in the Appendix hereto.

JURISDICTION

The Order denying petitioners' Petition for Rehearing was entered on April 27, 1982, and this Petition for Writ of Certiorari was filed within ninety (90) days of that date. The Court's jurisdiction is invoked under 28 USC § 1254 (1).

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

United States Code, Title 42:

§ 1983

"Every person who under color of any statute, ordinance, regulation, custom, or usage of any state or territory, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

United States Code, Title 42:

§ 1985 (3)

"If two or more persons in any state or territory conspire to go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any persons or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws, . . . in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done any act in furtherance of the object of such conspiracy, whereby another is injured in his personal property, or deprived of having and exercising any right or privilege of a citizen of the united States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators."

United States Constitution, Amendment Fourteen

Section 1

". . . no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

Jurisdiction of the District Court was invoked pursuant to Title 28 USC § 1331 (a) and 1343.

Petitioners Craig Pollard and Henry Meadows are former police officers of the respondent City of Detroit.

On May 24, 1973 petitioners were given notification of suspension by the Detroit Police Department for the reason that "Officers were officially indicted by the Wayne County Citizens Grand Jury." The suspension resulted in both petitioners being relieved of their responsibilities as police officers and at the same time resulted in their losing all pay and fringe benefits to which they were entitled. It is important to note that at the time of the suspension, petitioners were not charged departmentally by the Detroit Police Department. In other words, no specific charges pursuant to the Department's rules and regulations appeared on the face of the notice of suspension.

Further, although requested by petitioners and mandated by law and contract, no hearings on the suspensions were conducted prior to the loss of pay, fringe benefits and other entitlements. Petitioners were subsequently tried by a jury of their peers in the Recorder's Court for the City of Detroit, and acquitted of all charges in September, 1974 which formed the basis of the indictments causing their initial suspension from the Detroit Police Department.

Although acquitted of all charges brought about by the Wayne County Citizens Grand Jury indictments, the Detroit Police Department failed to revoke petitioners' suspension. There was no apparent reason for not reinstating petitioners as they were highly rated police officers and had received numerous commendations for their performances in the line of duty and there were no charges either criminally or departmentally pending against them.

Instead, on or about October 18, 1974, approximately 18 months after the initial suspensiion, petitioners for the first time were charged by the Detroit Police Department with allegedly violating Departmental rules and regulations. It is noteworthy that those charges were based on alleged incidents occurring approximately two years prior to the petitioners' being charged departmentally. A notice of hearing was also included in those charges indicating that a "chief's hearing" would be held on the charges before then Chief of Police, Respondent Phillip G. Tannian, on October 28, 1974.

At the "Chief's hearing" the charges were read to petitioners, each entered a plea of not guilty on all charges. No evidence was offered against them at the hearing. Numerous objections were placed on the record by petitioners and their attorney from the Detroit Police Officers' Association concerning the timeliness and vagueness of charges and other defects in the proceedings. The Chief then summarily discharged both petitioners whereupon they immediately appealed to the Police Trial Board for review of their discharges.

Petitioners, after having made numerous requests to the Board of Police Commissioners in March and April, 1975, were finally granted an evidentiary hearing before a police Trial Board in May, 1975 eight (8) months after their summary termination by the Chief of Police, and two (2) years after they were first suspended.

The Trial Board Panel adjudicating petitioners cases consisted of three officials one of whom was respondent

William Hart, Chief of Police who was appointed Chief while still considering, as a Trial Board member, the previous Chief's decision. One other member of the Trial Board was inspector Richard Dungy, who took an active part in investigating petitioners' cases leading up to their discharge. By action of the Trial Board, the petitioners' discharges were sustained.

Petitioners immediately appealed for a hearing before a panel of arbitrators which rendered its decision on June 30, 1976 setting aside all charges except one against petitioner Meadows and two against petitioner Pollard for "procedural defects of a fundamental nature." (App. A-78) The matter was remanded back to the police Trial Board for reconsideration of the penalty of discharge. Petitioners' discharges were again sustained in December, 1976 by action of the Police Trial Board.

In January, 1977, petitioners sought through their union representative to again appeal this final Trial Board decision, but with no success as their union determined that it had done all that it could on their behalf and that any further proceedings would be unavailing.

Petitioners subsequently filed an action on October 24, 1978 in the United States District Court, Eastern District of Michigan, Southern Division, alleging violations of their civil rights under Title 42 USC, § 1983 and § 1985 (3); violation of their Constitutional rights under the United States Constitution, Fourteenth Amendment; Michigan Constitution, Articles 1 and 2, and further alleging wrongful discharge, breach of employment contract and defamation under the common law of the State of Michigan. (App. A-4)

Subsequently, on November 14, 1979, the Respondents filed a Motion To Dismiss and/or for Summary Judgment.

Petitioners began this appellate action from a decision by the Honorable Charles W. Joiner of the Federal District Court, Eastern District of Michigan, Southern Division, granting the Respondents' motion to dismiss. The decision was reflected in his opinion and order dated January 16, 1980 (App. A-67) dismissing Petitioners' complaint and in his order dated March 16, 1980 (App. A-69), denying petitioners' motion to amend their complaint and further dismissing all federal claims alleged in their complaint with prejudice in addition to all remaining state claims. A judgment reflecting the order of March 16, 1980 was entered by the Court on March 26, 1980. (App. A-70)

Subsequent to the January 16, 1980 order, on January 28, 1980, Petitioners filed a motion for order allowing them to amend their second amended complaint and at the same time filed the proposed third amended complaint. (App. A-54)

The Court after consideration of Petitioners' request to amend their complaint denied their motion for the reason that the proposed third amended complaint was insufficient as it failed to state a claim upon which relief could be granted under Rule 12(b)6 of the Federal Rules of Civil Procedure. As a result of Judge Joiner's decision, all relief was denied under federal law with the remaining state law elements of Petitioners' case dismissed for lack of jurisdiction.

A Notice of Appeal was filed on April 22, 1980 by petitioners in the District Court preserving their appeal to the United States Court of Appeals, Sixth Circuit.

Oral argument was held before the Court of Appeals on February 9, 1982 with its decision and order entered and issued on February 17, 1982 affirming the District Court's Judgment. Petitioners then filed a Petition for Rehearing En Banc which was denied by the Court of Appeals on April 27, 1982.

REASONS FOR GRANTING THE WRIT

I

THE DECISION BELOW SUBSTANTIALLY CONFLICTS WITH DECISIONS OF THE UNITED STATES SUPREME COURT AS TO THE APPLICABILITY OF THE DUE PROCESS CLAUSE UNDER THE 14TH AMENDMENT TO THE UNITED STATES CONSTITUTION, AS IT RELATES TO TERMINATION PROCEDURES EMPLOYED BY STATES AND THEIR POLITICAL SUBDIVISIONS IN SUSPENDING AND/OR DISCHARGING PUBLIC EMPLOYEES.

The United States Constitution, Amendment Fourteen, Section 1, states in pertinent part as follows:

> ". . . no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." (Emphasis Added)

This concept of due process of law has applicability to the procedures employed by a state in effecting a deprivation of an individual's life, liberty or property. In

addition the substantive matters brought under consideration by a state, in those proceedings, are also subject to certain due process requirements under the 14th Amendment.

Due process of law has been defined in numerous cases in various courts throughout this system of jurisprudence, the clause in question means that there can be no proceeding against life, liberty or property which may result in the deprivation of either without the observance of those general rules established in our system of jurisprudence for the security of private rights. *Cf., Hagar* v *Reclamation Dist. No. 108*, 4 S Ct 663; 11 US 708 (1884) "Due process is a law which hears before it condemns; which proceeds upon inquiry, and renders judgment only after trial." (Emphasis added) *Sexton* v *Barry*, 233 F2d 220 (1956).

This Court in prior decisions has sought to define, on a case by case basis, the practical meaning and application of the due process clause under the 14th Amendment. In the case of *Board of Regents* v *Roth*, 408 US 564; 925 S Ct 2701 (1972) this Court, considering prior decisions falling under this section of the constitution held that in order for state action to be proscribed by the 14th Amendment it must infringe on an individual's "property interest" or "liberty interest" as defined with reference to state law. Further, that if intended state action has the potential to cause an infringement on such an individual's interest, certain due process requirements must be met prior to action being taken.

It has been consistently held by this Court that where a public employee has an expectancy of continued employment arising from contract, rules and understandings officially promulgated and fostered, he has a due process right under the 14th Amendment to

notice, reasons and a hearing before he can be dismissed from employment. *Perry* v *Sindermann*, 408 US 593; 92 S Ct 2694 (1972); *Bishop* v *Wood*, 426 US 341, 48 L Ed 2d 684, 96 S Ct 2074 (1976).

In the case at bar the Sixth Circuit held that petitioners were accorded due process of law and upheld the dismissal of their complaint notwithstanding the substantial allegations raised in petitioners' original and amended complaints challenging the procedures employed by the Respondent City in suspending and then subsequently terminating their employment, wages and other benefits.

It is alleged in petitioners' Third Amended Complaint (App. A-54) that the petitioners had a continued expectancy of employment. This expectancy was based on the fact that they were employed pursuant to a collective bargaining agreement with the Respondent City of Detroit, which clearly outlined the procedures and circumstances under which a police officer could be suspended or terminated. This contract incorporated those rights guaranteed by the U.S. Constitution all the rules and regulations of the Detroit Police Department and in addition the Detroit City Charter and any of its terms applying to the City of Detroit police officers and their working conditions. The petitioners clearly set forth in both the Second Amended Complaint and in their proposed Third Amended Complaint the various sections of the Collective Bargaining Agreement and the City Charter which applied to suspension and termination indicating an expectancy of continued employment until those procedures were employed to effect their suspension, dismissal, or termination of pay and fringe benefits.

Further, the Petitioners' expectancy of employment as alleged in their complaint was based on their past employment records which were excellent as indicated by the many awards, letters of commendation, official ratings, etc. This expectancy of continued employment has led the courts to require more in the way of due process protections in order to protect an individual's employment. In the case of *Gaffney et al* v *Silk et al*, 488 F2d 1248 (1973), a case involving the termination of disability payments to former policemen by action of the Town Selectmen, the Court held that ". . . the particular benefits to which petitioners are entitled were required and are enforceable entirely by state statute. However, the deprivations which they allege in their complaint concern not the termination of those benefits per se, but their termination without the essential requisites of procedural due process — notice, reasons, and a hearing — which are the clear requirements of the Fourteenth Amendment."

Petitioners are now, and have since the inception of this action, challenging the procedures employed in effecting their suspension and employment termination. Plaintiffs have alleged a denial of due process in their Second Amended Complaint (App. A-42) and in their proposed Third Amended Complaint (App. A-54) with regard to the procedures used to first suspend them from their employment without pay and fringe benefits on May 24, 1973, and in their termination of employment on October 28, 1974 by the Detroit Police Department made effective retroactive to May 24, 1973.

Petitioners have clearly alleged in their Second Amended Complaint and in their proposed Third Amended Complaint that they were denied a hearing

prior to their suspension and termination of all pay and benefits on May 24, 1973 with the first evidentiary hearing concerning their suspension/dismissal commencing on May 19, 1975 almost *two (2) years* later.

It appears that the Sixth Circuit overlooked or failed to fully appreciate the nature of the claims raised by petitioners in their complaint. It seems that the position taken by the District Court and the Sixth Circuit Court of Appeals is contrary to the great weight of many Supreme Court cases which have previously spoken to the issues raised in the petitioners' complaint. *Board of Regents* v *Roth, supra; Perry* v *Sindermann, supra; Bishop* v *Wood, supra.*

A reading of petitioners' Second Amended Complaint (App. A-42) clearly shows in the amendment to paragraph 16, that petitioners alleged a denial of their continued employment, wages and fringe benefits without a hearing in violation of the due process clause of the Fourteenth Amendment to the Constitution. A thorough reading of petitioners' proposed Third Amended Complaint (App. A-54), Counts 1 and 2, clearly shows allegations by the petitioners that they are claiming a denial of due process by the respondents' failure to provide them a hearing of any sort, prior to their suspension from employment and termination of all pay and benefits on May 24, 1973; failure to provide them with a specific notice of what departmental rules and regulations were violated at the time of the May 24, 1973 suspension; failure to provide them with a timely notice of charges forming the basis of their termination on October 28, 1974; failure to provide them with an evidentiary hearing on October 28, 1974, prior to the termination of their employment, wages and other fringe benefits; and the further deprivation of their "liberty"

under the Constitution by sending false and unsubstantiated information regarding the petitioners to prospective employers causing a loss of employment opportunity and further disseminating false and unsubstantiated information throughout the community in which they live causing damage to their good name and reputation.

The Court held in *Board of Regents* v *Roth, supra*, that, "The state, in declining to rehire the respondent, did not make any charge against him that might seriously damage his standing and associations in his community. It did not base the nonrenewal of his contract on a charge, for example, that he had been guilty of dishonesty, or immorality. Had it done so, this would be a different case." For "(w)here a person's good name, reputation, honor or integrity is at stake because of what the government is doing to him, notice and an opportunity to be heard are essential." The court cited with approval, the case of *Wisconsin* v *Constantineau*, 400 US 433, 27 L Ed 2d 515, 91 S Ct 507 (1971).

A reading of petitioners' Second Amended Complaint and proposed Third Amended Complaint clearly contains allegations charging that the petitioners' reputations had been severely damaged in their community by the actions of the respondents and each of them. The action taken by the respondents occurred witholut having given either petitioner an opportunity to be heard concerning the truthfulness of the charges and statements made against them. Had this occurred, petitioners would not now be suffering the indignity of having their honor, good names, reputations and integrity held in such low esteem.

"In such a case, due process will accord an opportunity to refute the charge before university officials." In the present case, however, there is no suggestion, whatever that the respondent's "good name, reputation, honor or integrity" is at stake. *Roth, supra*. In the case now before this court there are clear and substantial allegations in the petitioners' Second Amended and proposed Third Amended Complaint that such concerns were at stake at the time of petitioner's suspension and subsequent termination from their employment.

The decision of the Sixth Circuit is in real conflict with the above cited and other decisions of this court as well as with the principles which are to guide it in applying the due process clause of the 14th Amendment, and its underlying policies. These conflicts justify the grant of certiorari to review the judgment below.

II

THE DECISION BELOW WILL HAVE A WIDE RANGING EFFECT ON MUNICIPAL EMPLOYMENT PRACTICES AND, AS SUCH, A CLEAR, UNEQUIVOCAL, AND COMPLETE DISSERTATION OF THE COURT'S POSITION BOTH LEGAL AND FACTUAL SHOULD BE SET FORTH IN AN OPINION.

As expressed in the petitioners' complaint (App. A-4) numerous challenges to the procedures employed by the respondent City of Detroit in effecting petitioners' discharges have been made. If the court accepts as true the well pleaded allegations contained in the petitioners' complaint, it would appear that the District Court and the Court of Appeals have given a full and complete license to a state and any of its political subdivisions, and more specifically the City of Detroit, to effect the

discharge of any police officer by using the same or similar methods and procedures as used against petitioners.

This case, if allowed to stand, will be cited as precedent to legitimize any suspension or termination action taken which follows a course similar to that taken to effect the petitioners' suspension and ultimate discharge.

In seeking to ascertain the basis of the Court of Appeals decision, since no full opinion is available to determine same, it appeared, from statements made by the panel in open court, that the Court was overly concerned with the failure of petitioners' union representatives to take their cases back before a panel of arbitrators thereby completely exhausting their contractual and administrative remedies. It thus appears the Court of Appeals took the position that petitioners' failure to completely exhaust their contractual administrative remedies precluded any Constitutional or civil rights litigation.

If this is the basis, this Court recently decided in the case of *Patsy* v *Board of Regents of the State of Florida*, No. 80-1874 decided June 21, 1982 that exhaustion of state administrative remedies is not a prerequisite to an action under 42 USC § 1983 in cases similar to the case at bar. The Court of Appeals failed to amplify its reasons for failing to rule on petitioners' civil rights claims founded on 42 USC § 1983 and § 1985(3). As a result, petitioners are in no position to know why their civil rights claims brought under this section were fatally defective.

Again, a clear decision from the Court of Appeals with supporting reasons both legally and factually would assist the respondent City of Detroit in knowing where and how it accorded petitioners' due process of law and why the court believed that petitioners' Constitutional and civil rights under 42 USC §§ 1983 and 1985(3) were not violated.

In short, the Court of Appeals only decided that petitioners were accorded due process of law regarding their loss of employment but failed to consider and rule on their other Federal grounds for relief under 42 USC § 1983 and § 1985(3).

A complete legal and factual opinion is absolutely essential to help guide the respondent City of Detroit in handling similar disciplinary cases and is important to petitioners to aid in the assessment of their future judicial course of action.

III

THE COURT OF APPEALS FAILED TO RULE ON PETITIONERS' FEDERAL CLAIMS FOR RELIEF FOUNDED ON 42 USC §§ 1983 and 1985 (3) WHICH WOULD HAVE PROVIDED AN ADDITIONAL AND/OR ALTERNATIVE BASIS OF RELIEF THEREBY AVOIDING A DISMISSAL OF THEIR LAWSUIT.

Notwithstanding the assertion of a claim for relief under 42 USC § 1983 and 1985(3) by petitioners in their Complaint, and the raising of these issues on appeal the Court of Appeals was completely silent regarding these issues when it rendered its decision upholding the dismissal of petitioners' complaint.

42 USC § 1983

The purpose of the Civil Rights Act, Title 42 USC § 1983, is to provide a civil action to protect persons against the misuse of power possessed by virtue of state law and made possible because one is clothed with the authority of the state. Whenever another does an official act, participates in another's official act, or omits to perform an act which he is legally required to do, this will cause a deprivation which falls under the coverage of § 1983. *Jobson* v *Henne*, 355 F2d 129 (1966).

"The Act (42 USC § 1983) prescribes two elements as requisite for recovery: (1) the conduct complained of must have been done by some person acting under color of law; and (2) such conduct must have subjected the complainant to the deprivation of rights, privileges or immunities secured by him by the Constitution and laws of the United States." *Basista* v *Weir*, 340 F2d 74 (3rd Cir. 1965). *Cf., Marshall* v *Sawyer*, 301 F2d 639 (9th Cir. 1962) and *Owens* v *City of Independence*, 445 US 622, 63 L Ed 2d 673, 100 S Ct 1398 (1980).

A perusal of the petitioners' complaint and the amendments thereto clearly reflects that substantial and sufficient allegations were raised satisfying the prerequisites for raising a claim for relief under § 1983.

Petitioners have alleged a denial of their civil rights under Title 42 USC, § 1983 by the City of Detroit, and several individually named officials acting on behalf of the City of Detroit.

The former Chief of Police, Respondent Phillip Tannian, was alleged to have deprived the petitioners of their "property" and "liberty" interests while acting under color of law without due process of law.

Paragraphs 27 through 33 of petitioners' proposed Third Amended Complaint (App. A-61, 62) clearly sets forth these claims with specific factual allegations showing how their rights were violated and in what manner.

The petitioners alleged further that respondent George Bennett, while head of the investigative squad investigating the petitioners, while acting under color of law, denied their rights to due process in the particulars as set forth in both the Second Amended Complaint (App. A-42) and the proposed Third Amended Complaint. (See paragraph 34 of petitioners' proposed Third Amended Complaint, App. A-62)

The respondent Chief of Police William Hart denied the petitioners' rights to a meaningful and impartial hearing as set forth in paragraphs 35 and 36 of petitioners' proposed Third Amended Complaint. (App. A-62, 63) Petitioners alleged in their proposed Third Amended Complaint (App. A-54) that the respondent Chief William Hart sat on the Trial Board panel adjudicating the petitioners' cases. No chief of police has ever sat on a Police Trial Board. The reason for this is clear when you consider the fact that the Police Trial Board functions primarily as a review board reviewing the decisions of the *Chief of Police*!

Petitioners allege in their proposed Third Amended Complaint (App. A-54) that respondent Chief William Hart appointed a member of the investigative squad, the one which investigated the petitioners' cases, to the Police Trial Board panel hearing the petitioners' cases. This was a further denial of petitioners' right to an impartial hearing within the meaning of the Fourteenth Amendment to the Constitution.

The deprivations of all rights of the petitioners hereinbefore mentioned were caused by the individual respondents named herein, and while acting under color of state and local law. The deprivations caused by the respondent City of Detroit occurred as a result of official action on the part of its employees both named and unnamed which action represented the official policy of the respondent City of Detroit.

If a ruling could be obtained on this aspect of petitioners' complaint, it may very well be sufficient to sustain their action.

42 USC § 1985(3)

On October 18, 1979 the District Court dismissed petitioners' 42 USC, § 1985(3) claim from its complaint on the basis that the claim as stated failed to state a claim sufficient to satisfy the necessary elements of that cause of action. The petitioners then filed the Second Amended Complaint with the Court realleging USC, § 1985(3) as a cause of action. Petitioners alleged additional and clarifying facts sufficient to state a cause of action against respondents. The Court dismissed the entire Second Amended Complaint on January 16, 1980 including the petitioners' claim under 42 USC, § 1985(3).

In *Griffin* v *Breckenridge*, 403 US 88, 102-3; 91 S Ct 1790 (1970) the court clearly spelled out the allegations necessary to sustain a § 1985(3) cause of action:

> "To come within the legislation (U.S.C. 1985(3)) a complaint must allege that the defendants did (1) 'conspire or go in disguise on the highway or on the premises of another' (2) 'for the purpose of depriving either directly or indirectly, any person or class of persons of the equal protection of the

> laws.' It must then assert that one or more of the conspirators (3) did or caused to be done 'any act in furtherance of the object of (the) conspiracy,' whereby another was (4a) 'injured in his person or property' or (4b) 'deprived of having and exercising any right or privilege of a citizen of the United States.' "

The petitioners' Second Amended Complaint fully alleges with factual particulars that the respondents conspired to deprive them of the equal protection of the laws and their equality of privileges and immunity under the laws of both the United States and the State of Michigan. Throughout petitioners' First Complaint and their Second Amended Complaint, such a conspiracy has been alleged.

The petitioners have specifically alleged that they were members of that class of police officers who resisted official wrong-doing and as such were stigmatized and subjected to severe and discriminatory Departmental discipline and scrutiny. As such they have alleged a "class based, invidiously discriminatory animus behind the conspirators action." *Griffin, supra.*

In *Cameron* v *Brock*, 473 F2d 608 (6th Cir. 1973) the court held "that § 1985(3)'s protection reaches clearly defined classes, such as supporters of a political candidate. If a plaintiff can show that he was denied the protection of the law because of the class of which he is a member, he has an actionable claim under § 1985(3)." (At p 610)

Plaintiffs here have alleged in their complaint facts sufficient to state a claim under § 1985(3). The alleged invidious classification of police officers unsupportive of official wrong-doing is clearly sufficient. "A more invidious classification than that between persons who

support government officials and their policies and those who are critical of them is difficult to imagine. Appellees drew a line that was not merely invidious but one that also struck at the very head of the protections afforded all persons by the First and Fourteenth Amendments." *Glasson* v *City of Louisville*, 518 F2d 1248 (1973).

If the Court of Appeals had considered petitioners' claim for relief under § 1985(3) and had issued a decision thereon, petitioners may have had an additional basis for obtaining the sought-after relief.

The decision by the Court of Appeals clearly undercut and undermined the effect and coverage of this section of the civil rights act and is in conflict with precedent established by this court. These concerns justify the grant of certiorari to review the judgment below.

IV

THE DECISION BELOW HAS SO FAR DEPARTED FROM THE ACCEPTED AND USUAL IN WHICH CIVIL RIGHTS COMPLAINTS ARE CONSTRUED SUCH THAT THIS COURT'S POWER OF SUPERVISION IS COMPELLED TO MAINTAIN CONSISTENCY OF LEGAL BOUNDARIES.

The petitioners' Complaint was dismissed by the District Court for failure to state a claim upon which relief could be granted under rule 12b(6) of the Federal Rules of Civil Procedure. This action was upheld by the Court of Appeals. (App. A.2) Rule 8(F) of the Federal Rules of Civil Procedure provides that:

> "*Construction of Pleadings*. All pleadings shall be so construed so as to do substantial justice."

In view of the extensive nature of the claims asserted by petitioners in their Complaint it hardly appears that the Court of Appeals held the view of liberality in construing their complaint.

It is petitioners' further position that both courts below failed to properly and liberally construe their civil rights complaint. Pursuant to the Federal Rules of Civil Procedure and prior court decisions, a liberal construction of petitioners' civil rights complaint was mandated.

This Court and its lower courts have consistently held that pleadings must be liberally construed in any civil rights action, and a motion to dismiss a civil rights complaint may be granted only where it clearly appears that a plaintiff could prove no set of facts which would entitle him or her to relief. Neither lower court has made such a finding against petitioners.

Although cited in petitioners' brief, the Court of Appeals failed to give due weight to this court's holding concerning the construction of civil rights complaints in the case of *Conley* v *Gibson*, 355 US 41, 78 S Ct 99 (1957). This Court held that a civil rights complaint should not be dismissed unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his or her claim entitling him or her to relief. See also *Jones* v *Hopper*, 410 F2d 1323 (10th Cir 1969) for a well reasoned opinion incorporating the holding in *Conley*.

A dispute regarding the alleged deprivation of constitutional rights is necessary because it is an express prerequisite of federal jurisdiction under Title 28 USC § 1343. Further, if the deprivation of such a constitutional right is alleged, the complaint will be generally sufficient under *Conley*, *Jones* and other cases, to

withstand a motion to dismiss under Rule 12 or a motion for summary judgment under rule 56 of the Federal Rules of Civil Procedure.

It appears by these and other decisions of this Court that the standard for dismissal set forth in *Conley, supra*, does not become operative unless a privilege or right secured by the constitution is identified and put into issue by the allegations of the complaint; that is, if the denial of a specific constitutional right is alleged, the action should not be dismissed unless it is beyond doubt that the plaintiff could prove no facts to support his or her claim.

Again petitioners make reference to the original and amended complaints filed in this action (App. A-4, A-42, A-54). Those complaints all contain specific allegations of a denial of constitutional and civil rights.

In view of the fact that the orders, decisions and opinions filed by the District Court and Appellate Court in this cause supporting their decision of dismissal fail to specifically deal with where the petitioners' complaints are defective, we are left to surmise.

However, it does not appear that the Court of Appeals was concerned with a liberal construction of the complaint as it focused, by its statements and questions from the bench during oral argument, on why the petitioners and/or their union representatives failed to seek another review of their cases before the panel of arbitrators as if to say that this is a sufficient basis for denying petitioners Federal claims for relief founded under the United States Constitution. Whether the Court of Appeals used this as a basis for its decision is uncertain as it was presented letters from the petitioners'

union representatives indicating the decision not to return to arbitration was the union's and not petitioners' who diligently sought another review.

These conflicts with prior decisions of this court and the uncertainty which the decision of the court of appeals has created concerning the reasons for its decision justify the grant of certiorari to review the judgment below.

CONCLUSION

For these reasons a Writ of Certiorari should issue to review the judgment and opinion of the Sixth Circuit.

Respectfully submitted,

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